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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 189

HARTFORD ACCIDENT & INDEMNITY COMPANY ET AL.,

Appellants,

vs.

DELTA & PINE LAND COMPANY,

Appellee.

STATEMENT OF APPELLEE OBJECTING TO JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

MARCELLUS GREEN,
Jackson, Mississippi;
WALTER SILLERS,
Rosedale, Mississippi;
W. C. ROBERTS,
Rosedale, Mississippi;
OSCAR JOHNSTON,
Scott, Mississippi;
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Jackson, Mississippi,
Attorneys for Appellee.

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SUPREME COURT OF THE UNITED STATES

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No. 189

HARTFORD ACCIDENT & INDEMNITY COMPANY ET AL.,

Appellants,

vs.

DELTA & PINE LAND COMPANY,

Appellee.

STATEMENT OF APPELLEE OBJECTING TO JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

Comes Delta & Pine Land Company, a corporation, called appellee, objects to jurisdiction being taken, moves to dismiss, but if technically jurisdiction has attached, then that the cause be affirmed, there being no Federal question herein presented not thoroughly settled.

Respectfully,

MARCELLUS GREEN,
Jackson, Mississippi;
WALTER SILLERS,
Rosedale, Mississippi;
W. C. ROBERTS,
Rosedale, Mississippi;
OSCAR JOHNSTON,
Scott, Mississippi;
GARNER W. GREEN,
Jackson, Mississippi,
Attorneys for Appellee.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 189

HARTFORD ACCIDENT & INDEMNITY COMPANY ET AL.,

Appellants,

vs.

DELTA & PINE LAND COMPANY.

BRIEF IN SUPPORT OF OBJECTION TO JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

Claim of Jurisdiction.

Appellant claims jurisdiction under Section 237, Judicial Code, as amended (Revised Statutes, Section 690-709; Mar. 3, 1911, c. 231, Sections 236, 237, 36 Stat. 1156; Dec. 23, 1914, c. 2, 38 Stat. 790; Sept. 6, 1916, c. 448, Section 2, 39 Stat. 726; Feb. 17, 1922, c. 54, 42 Stat. 366; Feb. 13, 1925, c. 229, Section 1, 43 Stat. 937), 28 U. S. C. A., Section 344, in that—

(a) Upon remand, Mississippi's court did not conform to the opinion and mandate of this Court; and

(b) (Assigned, but not argued in the jurisdictional statement) "The Supreme Court of Mississippi was in error in holding that under the Tennessee decisions the provision of the bond that any claim thereunder must be made upon the surety within fifteen months after termination of its suretyship for the defaulting employee, was not a condition

precedent, compliance with which was essential to a recovery upon the bond."

Statement of Case as Made by This Court and the Supreme Court of Mississippi.

On prior appeal (*Hartford Accident & Ind. Co.* v. *Delta & Pine Land Co.*, 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A. L. R. 928), reversing Mississippi's court on the former appeal, as reported in 169 Miss. 196, 150 So. 205, this Court stated this case at that time:

> "This was an action instituted in a circuit court of Mississippi by Delta & Pine Land Company, a corporation of that state, with its principal place of business therein, against Hartford Accident & Indemnity Company, a corporation of Connecticut, having its principal place of business in Hartford in that state. The declaration alleges that on or about January 1, 1928, the plaintiff applied to the defendant for a fidelity bond and paid the agreed premiums therefor, and the defendant executed and delivered to the plaintiff such a bond, whereby it bound itself to pay the plaintiff, within sixty days after satisfactory proof, pecuniary loss sustained by the plaintiff through fraud or dishonesty or wilful misapplication by any employee 'in any position, anywhere,' from the time that the name of such employee should be placed upon a schedule attached to the bond to and including the termination of the suretyship for such employee by his dismissal, retirement from service, discovery of loss, or cancellation of the bond by the parties. It is alleged that the name of H. H. Harris, as treasurer of the plaintiff, appears upon the schedule, and that the amount of coverage for him is $25,000. Sundry defalcations by Harris between May 9, 1929, and December 20, 1929, totaling $2703.79, are set forth, all of which and the resulting loss occurred in the first judicial district of Bolivar County, Mississippi. The further material matters charged are that the defendant through-

out all the times mentioned in the declaration, and ever since, was and now is duly qualified and licensed to do business in Mississippi; that the dishonest acts of Harris were discovered on or about May 20, 1931, immediate notice given to the defendant at its home office, and affirmative proof of loss under oath, with full particulars, filed with the defendant at its home office within three months after the discovery. The declaration in conclusion asserts compliance by plaintiff with all the terms of the bond, and refusal of the defendant, though requested, to make payment of the sum demanded. Annexed to the declaration are copies of the bond and the supplementary schedules forming part of it.

"The defendant's plea was, in substance: The plaintiff, before and at the date of the contract of suretyship, was doing business in Tennessee, with its principal office at Memphis in that state, and defendant also was then and is now doing business in Tennessee, having an agency at Memphis; plaintiff, through its office at Memphis, applied to defendant through its agency there for the bond, rider and schedules containing the name of the defaulting employee, Harris, constituting the contract of suretyship; defendant through its agency at Memphis executed and delivered the bond and schedules to plaintiff at its office in that city; the contract is a Tennessee contract and governed by the laws of Tennessee, and full faith and credit must be given to it in the courts of Mississippi in accordance with the requirements of Article 4, Section 1, Article 1, Section 10, and Section 1 of the 14th Amendment of the Constitution of the United States; there was not at the time of delivery of the contract, and is not now, any statute in Tennessee prohibiting or invalidating the condition or limitation in the contract to the effect that any claim thereunder must be duly made upon the defendant as surety within fifteen months after the termination of the suretyship for the defaulting employee, and the plaintiff did not make claim upon the defendant for the loss within fifteen months after the

termination of the suretyship for Harris, as the contract was cancelled and terminated December 31, 1929, and the plaintiff made no claim until June 22, 1931.

"To this plea the plaintiff demurred, assigning these causes of demurrer: (1) the construction and validity of the provision of the contract relied upon in the plea is to be determined by the laws of Mississippi, and not by the laws of Tennessee; (2) the statute of limitations of the state where suit is brought is the statute which governs the time for bringing this action, and the provision in the contract requiring that any claim thereunder must be made upon the defendant within fifteen months after the determination of the suretyship for the defaulting employee is in violation of Section 2294 of the Mississippi Code of 1930, and in violation of the public policy of Mississippi, and its courts are not required to give full faith and credit to this provision of the contract by Article 4, Section 1, Article 1, Section 10, or Section 1 of the 14th Amendment of the Constitution.

"The cause came on for hearing upon the pleadings, and the court sustained the demurrer. The defendant declined to plead further; whereupon judgment was entered by default in favor of the plaintiff, a jury was impaneled and assessed damages at the amount claimed, and final judgment was accordingly entered.

"Upon appeal by the defendant the Supreme Court of Mississippi affirmed the judgment. Conceding that under the decisions of the Supreme Court of Tennessee the provision for notice within fifteen months of the termination of the suretyship is a valid limitation of liability and not a limitation of action, the court said the converse is true in Mississippi. Although the bond was executed and delivered and the agreement consummated in Tennessee, where the plaintiff and the defendant's agent had their respective offices, and where, in the absence of proof of a contrary intent, the contract was to be performed, the court concluded that the statutes of Mississippi made the instrument a Mississippi contract, and annulled the contractual limitation of the time for giving of notice of claim.

"The Mississippi statutes relied upon were the following:

" 'A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction, loss or injury of something in which the assured or other party has an interest, as an indemnity therefor; and it shall be unlawful for any company to make any contract of insurance upon, or concerning any property or interest or lives in this state, or with any resident thereof; or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance unless and except as authorized under the provisions of this chapter. All contracts of insurance on property, lives or interests in this state shall be deemed to be made therein.' Miss. Code 1930, Section 5131.

" 'The limitations prescribed in this chapter shall not be changed in any way whatsoever by contract between parties, and any change in such limitations made by any contract stipulation whatsoever shall be absolutely null and void; the object of this statute being to make the period of limitations for the various causes of action the same for all litigants.' Miss. Code 1930, Section 2294.

"The state Supreme Court said:

" 'But clearly under Section 5131, Code 1930, defining insurance, this indemnity bond is a contract of insurance within the purview of that statute; and, further, it being expressly provided therein that all contracts of insurance on property, lives, or interests in this state shall be deemed to be made therein, in our judgment, makes the contract herein under review a Mississippi contract and solvable under the laws of this state. The contract here provided or stipulated that the appellee should be indemnified from loss by the defalcation of H. H. Harris in any position anywhere, and when he, the employee and the insured herein, re-

moved to Mississippi and there defaulted, so far as the appellee is concerned its interest was insured or indemnified by the appellant in Mississippi, and, under the provision quoted from the above statute, became operative, and this state is obligated to enforce it, as a Mississippi contract, although it contained all the elements necessary to make it a Tennessee contract, but for the statute.'

* * * * * * *

"'When the statute declares that such a contract shall be deemed to be made in this state, it means that the conflict of law between the two states is eliminated, and thereby, * * * a contract for fifteen months' notice was a limitation of the action enforceable as such in this state.' (— Miss. —, 150 So. 207.)

"*The Mississippi statutes, so construed, deprive the appellant of due process of law.*" (Italics ours unless noted.)

Whereupon, this Court concluded its opinion thus:

"Our conclusion renders unnecessary a consideration of the claims made under the full faith and credit and contract clauses of the Federal Constitution.

"The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion."

Upon remand by the State Supreme Court, the Fourth Replication was filed without objection, issue taken by consent, and upon this, the State Supreme Court decided the case upon the present appeal. This Replication set up that under the Tennessee law the provisions of the policy sued on imposed an absolute obligation for payment, that compliance with the provision as to suit within 15 months was not a condition precedent, nor was there a forfeiture declared for non-compliance therewith. Appellee took issue upon appellant's plea as to the Tennessee law embodied in

Tennessee's decisions. An examination of the record will disclose that appellant failed to prove its plea in this and other particulars.

The circuit judge took the same view of the law as did the majority of the Supreme Court on the second hearing, yet Division B, overlooking completely the Fourth Replication, assumed to hold that by sustaining the demurrer, appellee was precluded from taking issue upon the issuable facts averred, but notwithstanding, upon a Suggestion of Error, directing the Court's attention to the Fourth Replication, as to the Tennessee law, the prior judgment was reversed and vacated, and an opinion delivered, 195 So. 667, thus stating the case on the present appeal (Appendix "A" hereto):

> "This case was first argued orally before, and submitted to, Division B of the Court for decision, and the judgment of the court below in favor of the appellee was reversed and the cause dismissed. On suggestion of error, a request was made of counsel to file additional briefs on the question of whether or not a clause contained in the fidelity bond sued on, requiring any claim thereunder to be made within fifteen (15) months after the termination of the suretyship for the defaulting employe, was a condition precedent to liability. This point had been raised in the *fourth* replication filed in the trial court, by the appellee to the plea of the appellant, and that court had held that the right of action could not be defeated 'unless there is some forfeiture in the bond, or there is some stipulation that there will be no liability.' In the opinion rendered by Division B as aforesaid, as reported in 188 So. 539, it was said that *three* replications to the appellant's plea had been filed in the trial court. The substance of the first three replications was then set forth in the opinion, and it was held that the demurrers thereto should have been sustained. These three replications merely set forth anew, and also urged additional grounds for, the contention theretofore made by the appellee on a former

appeal of the case to this Court, as reported in 169 Miss. 196, 150 So. 205; and to the Supreme Court of the United States, 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A. L. R. 928, to the effect that the rights of the parties under the fidelity bond sued on were governed by sections 2294 and 5131 of the Mississippi Code of 1930 and the decisions of our Court, instead of the laws of the State of Tennessee; whereas, the fourth replication raised for the first time the specific issue of whether or not, even under the Tennessee decisions, a compliance with the clause of the fidelity bond, relied on in appellant's plea as a bar to recovery, was made a condition precedent to liability, as will be hereafter shown. In the opinion rendered by Division B on the present appeal, 188 So. 539, supra, no reference was made to this fourth replication, nor was the point involved therein specifically discussed or decided, on account of the fact that the briefs of counsel were largely devoted to reargument of the questions again raised by the first three replications, which had been settled adversely to the appellee's contention by the decision of the United States Supreme Court, 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A. L. R. 928, supra, reversing the decision of this Court on the former appeal, as rendered in 169 Miss. 196, 150 So. 205, supra. Upon consideration of the suggestion of error and briefs thereon, the opinion rendered by Division B, as aforesaid, was withdrawn, the judgment of reversal set aside, the cause remanded to the docket for argument before Division A, and thereafter submitted for decision by the Court in banc.

"The appellant Indemnity Company contends that the appellee was precluded by the law of the case from raising the issue presented by its fourth replication to the appellant's plea, after the remand of the case to the Circuit Court of Bolivar County for further proceedings not inconsistent with the opinion rendered by the Supreme Court of the United States aforesaid; also, that under the laws of Tennessee its plea is good, and was sustained by the proof. To determine these two

questions it is necessary to first state the issue involved on the former appeal here, and the federal question presented to the Supreme Court of the United States when it reversed the former decision of this Court; and second, to review the decisions of the Tennessee Court and the law as stated by the text writers on the question of whether or not a non-compliance with the provision of the fidelity bond relied on as a defense to the suit is a condition precedent to liability, or whether a failure to comply therewith merely serves to postpone the right to sue.

"On the former appeal the appellee had recovered a judgment against the appellant Indemnity Company for the sum of $2,703.79 because of the alleged default of H. H. Harris, who was listed in a fidelity bond as the treasurer of the appellee, employed in its office at Memphis, Tennessee, and whose honesty and fidelity, was insured to the extent of any defalcations, committed in any position, anywhere, not exceeding the sum of $25,000, and which bond was entered into and consummated in the state of Tennessee, where the appellee then had its principal office, and where the appellant Indemnity Company maintained a local office.

"The declaration alleged that subsequent to the execution and delivery of the contract of indemnity at Memphis, the appellee moved its office to Scott, Mississippi, where the defalcations of Harris occurred on various dates between May 9, 1929, and September 20, 1929, all in Bolivar County, Mississippi, where the appellee was then engaged in conducting a large planting operation as its principal business. That these defalcations were not discovered in the exercise of due diligence until May 24, 1931, when notice was given immediately to the appellant. That within three months thereafter affirmative proof of the loss was filed with the appellant at its home office at Hartford, Connecticut; and the suit was filed within twelve (12) months of the filing of the proof of loss, as required by the policy.

"The contract of indemnity was terminated on December 31, 1929, and the appellee had not made its claim

until June 22, 1931, which was more than fifteen months after the termination of the contract of suretyship, but within thirty (30) days of the discovery of the shortage, according to the allegations of the declaration.

"The appellant filed a plea to the declaration, to the effect that the cause of action could not be maintained for the reason that the contract contained the additional clause which provides that, 'Any claim must be duly made upon the surety within fifteen (15) months after the termination of the contract of suretyship for the defaulting employee, * * *.'" And the plea averred that plaintiff did not make claim for its loss within the time above required. That, wherefore, the plaintiff should not have its action against the defendant for the reason that the fidelity bond sued on is a Tennessee contract, and is governed by the laws of that state. That, therefore, full faith and credit must be given thereto in the courts of Mississippi under the requirements of article 4, section 1, article 1, section 10, and section 1 of the Fourteenth Amendment to the Constitution of the United States, since there is no statute in Tennessee which prohibits the limitation aforesaid in such contracts of insurance or indemnity, and averred that the highest court of Tennessee, in the cases of Guthrie *v.* Indemnity Ass'n, 101 Tenn. 643, 49 S. W. 829; Phoenix Cotton Oil Co. *v.* Royal Indemnity Co., 140 Tenn. 438, 205 S. W. 128; City of Bristol *v.* Bostwick, 146 Tenn. 205, 240 S. W. 774, and other decisions of that court not cited in the plea, had held that such a limitation was valid and binding.

"Instead of replying to this plea by saying that while it is true that the provision in the bond, non-compliance with which the defendant had set up therein as a defense, is valid and binding under the decisions of the Tennessee court, and not prohibited in such contracts by any statute of that state, it did not constitute a condition precedent to liability, since the contract did not so provide, nor provide for a forfeiture in the event of a failure to comply therewith—the plaintiff saw fit not to then file a replication to the legal conclusion con-

tained in the defendant's plea of the effect of the Tennessee decisions, or to plead the fact, to be disclosed by the evidence, that the contract contained no clause providing for a forfeiture for failure to make claim for the loss within fifteen (15) months after the termination of the contract of suretyship, or clause making the filing of the claim within that time a condition precedent to liability, but demurred to the plea and assigned the following grounds:

" '1—The construction and validity of the provision in the contract requiring that any claim thereunder must be duly made upon the defendant, the surety, within fifteen (15) months after the termination of the suretyship for the defaulting employee is not determined by the laws of the state of Tennessee but is determined by the laws of the state of Mississippi.

" '2—The statutes of limitations of the state where the suit is brought is the statute of limitations which governs the time within which actions may be brought, and the provision in the contract requiring that any claim thereunder must be duly made upon the defendant, the surety within fifteen (15) months after the termination of the suretyship for the defaulting employee is in violation of section 2294 of the Mississippi Code of 1930 (section 2491 of Hemingway's 1917 Code of Mississippi), and in violation of the public policy of the state of Mississippi, and the courts of this state are not required to give full faith and credit to said provision under and in accordance with the requirements of article 4, section 1; article 1, section 10 and section 1 of the Fourteenth Amendment of the Constitution of the United States as contended in defendant's said plea.'

"The Circuit Court of Bolivar County having sustained this demurrer, the defendant Indemnity Company declined to plead further, and the judgment was thereupon rendered against it for the alleged defalcations of the plaintiff's employee, Harris, in the sum hereinbefore mentioned. On the appeal here, as re-

ported in 169 Miss. 196, 150 So. 205, supra, the Court affirmed the judgment of the Circuit Court, on the ground that section 5131 of the Mississippi Code of 1930, defining insurance, rendered the fidelity bond sued on a contract of insurance, and solvable under the laws of this state, though made in Tennessee, since the statute provides that, 'All contracts of insurance on property, lives or interests in this state shall be deemed to be made therein;' and, further, that in view of the fact that section 2292 of said Code provides that, 'All actions for which no other period of limitation is prescribed shall be commenced within six years next after the cause of such action accrued, and not after,' and section 2294 thereof renders null and void any change in this limitation by contract between the parties, the plea constituted no defense to the suit. In so holding that these statutes rendered the contract solvable under the laws of Mississippi instead of Tennessee, our Court was adhering to its former decision in that regard, whereby the Court, as observed in the opinion referred to, had committed itself to the proposition that a contract of insurance on an interest in this state, although the contract be made in another state, was to be determined by the laws of our own state; and cited in support thereof the cases of Fidelity Mutual Ins. Co. *v.* Miazza, 93 Miss. 18, 46 So. 817, 136 Am. St. Rep. 534; Stuyvesant Ins. Co. *v.* Smith Motor Sales Co., 135 Miss. 585, 99 So. 575, which so held. Hence, the appellee was entitled to assume on that appeal that the only question presented to the Court here for decision on the declaration, plea, and demurrer was whether these Mississippi statutes and decisions would govern the rights of the parties to the contract of suretyship sued on, or whether they were to be governed by the laws of Tennessee, since the limitation in controversy would be unenforceable under the statutes and decisions of the state of Mississippi, if applicable, without regard to whether or not the limitation constituted a condition precedent to liability under the laws of Tennessee.

Neither do the briefs, as officially reported in the case on the former appeal, 169 Miss. 196, 150 So. 205, supra, show that the contention was made therein that the provision in the bond, requiring any claim thereunder to be duly made upon the surety within fifteen (15) months after the termination of the suretyship for the defaulting employee, was a condition precedent to liability under the laws of Tennessee; nor is there a Tennessee case cited in the briefs. The only decisions of that Court referred to at all are those listed in the appellant's plea, and they do not sustain the affirmative of that proposition, as will be hereinafter shown. In other words, the sole question presented by the plea and demurrer, and argued in the briefs at that time was the question of whether or not the laws of Mississippi could be integrated into this Tennessee contract. This was the issue presented by the declaration, plea and demurrer, and no other question was properly before the Court for decision.

"From that decision the case was appealed to the Supreme Court of the United States, and the sole grounds of error assigned were:

" 'The Supreme Court of Mississippi erred in holding, that under section 5131 of the Mississippi Code of 1930 the bond or policy of insurance sued upon, made and to be performed in Tennessee, was to have been deemed to have been made in Mississippi and solvable under the laws of Mississippi because upon an interest in Mississippi, and therefor under section 2294, Mississippi Code of 1930, the provision of said bond of policy that claim thereunder must be made upon the surety within fifteen months after termination of the suretyship, valid under the Laws of Tennessee, was null and void because in conflict with the limitations on actions upon such contracts prescribed by the laws of Mississippi, in that said statutes in such construction and application were made repugnant to Article IV, Section 1 and Section 1 of the 14th Amendment to the Constitution of the United States.

"'2. The Supreme Court of Mississippi erred in holding that the bond or policy sued upon was upon an interest in the state of Mississippi.'

"The Supreme Court of the United States thereupon reversed the decision of this Court and remanded the cause for further proceedings not inconsistent with its opinion. Hartford Accident & Indemnity Co. *v.* Delta & Pine Land Co., 292 U. S. 143, 54 S. Ct. 634, 78 L. Ed. 1178, 92 A. L. R. 928. Upon such remand the Supreme Court of this state remanded the case to the Circuit Court of Bolivar County, without any further opinion."

The Circuit court having found that the Tennessee decisions did not make this provision as to suit within fifteen months a condition precedent to liability, nor declare a forfeiture by reason thereof under the Tennessee decisions, found the law to be for plaintiff and accordingly rendered judgment. Upon appeal, as above shown, the Supreme Court of Mississippi affirmed, whereafter appellant appealed and assigns but two errors:

(1) "The Supreme Court of Mississippi did not proceed consistently with the opinion and mandate of the Supreme Court of the United States in this cause," and

(2) "The Supreme Court of Mississippi was in error in holding that under the Tennessee decisions the provision of the bond that any claim thereunder must be made upon the Surety within fifteen months after termination of its Suretyship for the defaulting employee, was not a condition precedent, compliance with which was essential to a recovery upon the bond."

Summary of the Argument.

Point I: Answering Appellant's Assignment (1), "The Supreme Court of Mississippi did not proceed consistently with the opinion and mandate in this cause, we submit:

(a) Complete and perfect and full compliance therewith had by Mississippi's Court;

(b) Appellant's decisions distinguished and additional reasons given why jurisdiction should be refused.

Appellant cites only three cases:

a. Chaffi v. *Taylor*, 116 U. S. 567, 29 L. Ed. 727, which is distinguishable because—

(1) This Court on the prior appeal considered and adjudged naught but deprivation of due process under the Federal Constitution;

(2) No jurisdiction in this Court upon the prior appeal to consider non-Federal questions;

(3) The questions determined on this appeal by Mississippi's Court as to what was decided on the prior appeal is conclusive here, Mississippi's Court holding that not until the fourth replication was filed (without objection under settled State practice, *Sperry's Estate* v. *Sperry*, 196 So. 656), did it become an issue as to what was the law in Tennessee under the Tennessee decisions and that Mississippi's Court had full jurisdiction to determine as to what that law was;

(4) What the law of Tennessee was as a fact was not in issue until the present appeal;

(5) Here, pursuant to a remand, the State court accepted as binding that correctly determined by this Court on the prior appeal—the fact that Mississippi could not integrate its two code sections into a validly-made Tennessee contract, and thereafter this was conceded by Mississippi's Court, and having so done, Mississippi's Court accepted the applicability of Tennessee's decisions construed those decisions,

and construction, alone, does not import a Federal question.

b. In re: Blake, 175 U. S. 114, 44 L. Ed. 94.

This case is distinguishable upon the same grounds urged *supra*, and where validity of the Tennessee law is conceded—its applicability admitted, but thereof naught but a construction is to be—there being no Tennessee statute involved—no Federal jurisdiction obtains.

c. Georgia Railway & Elec. Co. v. *Decatur*, 297 U. S. 620, 80 L. Ed. 925, which is readily distinguishable upon the same grounds, this Court being jealous of its jurisdiction and "may not be required to determine whether that (state) construction was or was not correct, upon the ground that if it were concluded that the construction was incorrect, it would follow that the State Courts had refused to give full faith and credit to the statutes involved, our jurisdiction would be enlarged in a manner never heretofore believed to have been contemplated." *Glenn* v. *Garth*, 147 U. S. 360, *infra*.

This contract of insurance could never have become a valid contract in Tennessee.

Point II: Appellant's Second Assignment is: "The Supreme Court of Mississippi was in error in holding that under the Tennessee decisions the provision of the bond that any claim thereunder must be made upon the surety within fifteen months after termination of its suretyship for the defaulting employee, was not a condition precedent, compliance with which was essential to a recovery upon the bond."

Whereto, we answer:

(a) No jurisdiction for the same reasons assigned in Point I;

(b) Where there is mere construction without a challenge of validity no Federal question arises;

(c) No jurisdiction under Section 237 Judicial Code, as amended, 28 U. S. C. A., 344.

Point I.

Unto Appellant's Assignment (1) "The Supreme Court of Mississippi did not proceed consistently with the opinion and mandate in this cause, we answer:

A. Complete and perfect and cheerful compliance therewith was had by Mississippi's Court. Quotation, *supra*, Appendix A.

Georgia Ry. & Elec. Co. v. *Decatur*, 297 U. S. 620, 80 L. Ed. 925.

Compton v. *Compton*, 196 So. (Miss.), 635.

B. Appellant's decisions distinguished and additional reasons given why jurisdiction should be refused.

Appellant cites only three cases:

a. Chaffin v. *Taylor*, 116 U. S. 567, 29 L. Ed. 727, wherein this Court said:

> "The rejoinder of the defendant allowed to be filed after the judgment of reversal, therefore, sought again to draw in question the very matter which had been already finally adjudged by this court in the same case. It did not deny the genuineness of the coupons tendered nor the fact of tender, and the question of law broadly decided on the demurrer to the replication necessarily involved every defense, arising as matter of law, that could be made upon any existing Acts of the General Assembly of Virginia; for the whole law of the case, as to the plaintiff's legal right to recover on his cause of action, was presented by the pleadings and was concluded by the judgment of reversal.